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City and County of San Francisco

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

CITY AND COUNTY OF SAN FRANCISCO,  
A California Municipal Corporation,

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE  
COMPANY, a Rhode Island Corporation,  
BOMBARDIER TRANSPORTATION  
(HOLDINGS) USA, INC., a Delaware  
Corporation,

Defendants.

AND RELATED COUNTERCLAIMS

No. C 04-5307 PJH

**STIPULATION TO EXTEND DEADLINES  
FOR FILING OF SUMMARY JUDGMENT  
MOTION AND REQUEST FOR ORDER**

1 Plaintiff City and County of San Francisco (“CCSF”), Defendant Factory Mutual Insurance  
 2 Company (“FMIC”) and Defendant and Counterclaimant Bombardier Transportation (Holdings)  
 3 USA, Inc. (“Bombardier”) hereby stipulate as follows and request an Order as set forth below:

4 1. At the hearing on March 15, 2006, before this Court, the Honorable Phyllis Hamilton  
 5 presiding, on Bombardier’s Motion to Sever and CCSF and FMIC’s Cross-Motions for Summary  
 6 Judgment, this Court denied the Cross-Motions without prejudice, and denied the Motion to Sever.  
 7 This Court further ordered:

8 a.) That the parties shall have until June 14, 2006, to engage in limited discovery on  
 9 the issues raised in CCSF’s and FMIC’s Cross-Motions for Summary Judgment  
 10 and in the Sixth Cause of Action in the Second Amended Complaint, in which  
 11 CCSF seeks a declaration that Bombardier’s recovery against CCSF, if any,  
 12 cannot exceed any amount CCSF receives from FMIC under FMIC Policy No.  
 13 UR 495; and

14 b.) That the parties shall file any motion for summary judgment relating to the  
 15 issues/claims in 1(a) above only, no later than July 19, 2006, to be heard and  
 16 briefed in accordance with the Civil Local Rules.

17 2. The parties have been diligently attempting to prepare a revised joint stipulation of  
 18 undisputed facts as respects the issues set forth in the previous Cross-Motions for Summary  
 19 Judgment. Counsel have been regularly meeting and conferring. CCSF and FMIC have also  
 20 provided each other with substantial additional documentation and information relating to these  
 21 issues and Bombardier has recently made additional information/documentation available. The  
 22 parties are also actively seeking further information from third-parties. However, based upon a  
 23 review of the documentation produced, the information provided, and the discussions among  
 24 counsel as to the substance of the cross-motions for summary judgment, the parties share the  
 25 opinion that they are unable to proceed with the filing of any summary judgment motions within  
 26 the present schedule set by the Court as additional information and discovery from each other as  
 27 well as from third parties is required. CCSF and Bombardier also have determined that the facts  
 28 relevant to the issues presented by the cross-motions are more complex and involved than

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previously presented and that a further inquiry into the negotiation and underwriting of the insurance policy at issue is required. Moreover, CCSF and Bombardier have determined that additional stipulated facts of a complicated and technical nature must be developed and agreed upon before any renewed cross-motion can be presented. Developing those facts will require significant additional analysis, investigation, and discovery.

3. The parties understand that the Court's Order to open discovery was intended to provide Bombardier with the opportunity to evaluate its position on the issues and present that position in the anticipated motions, if desired, without prejudice to the other parties' right to object to Bombardier's standing to present its position on coverage issues. .

4. The parties have agreed to depose several (as many as ten) "person most knowledgeable" witnesses on these complex technical issues and insurance matters. The witnesses, many of whom are not currently affiliated with any party, primarily reside out of the state of California. Each witness will require significant preparation to be able to submit to a meaningful deposition. The parties anticipate that these limited depositions can be concluded by September 29, 2006.

5. The parties, therefore, stipulate to the following modification to the Court's March 17, 2006 Order, and respectfully request that the following Order be issued in lieu thereof:

- a.) That the parties shall have until September 29, 2006, to engage in limited discovery on the two issues raised in CCSF's and FMIC's previous Cross-Motions for Summary Judgment, and on the issues raised by the Sixth Cause of Action in the Second Amended Complaint; and
- b.) That any motion for summary judgment shall be filed no later than October 23, 2006, with a hearing date to be set by the court, in accordance with the Civil Local Rules, and that any such motions shall be limited to the issues raised in the previously-filed cross-motions, and/or to the issue as to whether Bombardier's recovery, if any, against CCSF should be limited to the amount of any recovery awarded to CCSF under the FMIC policy as set forth in the Sixth Cause of Action in the Second Amended Complaint.

6. Kris A. Cox, counsel for Plaintiff, hereby attests that he has on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

**SO STIPULATED:**

Dated: July 5, 2006

WULFSBERG, REESE COLVIG & FIRSTMAN  
PROFESSIONAL CORPORATION

By: /s/ Kris A. Cox  
Kris A. Cox  
Attorneys for Plaintiff, City and County of  
San Francisco

Dated: July 5, 2006

CARLSON, CALLERDINE &  
PETERSON, LLP

By: /s/ Joyce Wang  
Joyce Wang  
Attorneys for Defendant Factory Mutual  
Insurance Company

Dated: July 5, 2006

SONNENSCHIEN NATH AND  
ROSENTHAL LLP

By:  
By: /s/ Gayle M. Athanacio  
Gayle M. Athanacio  
Attorneys for Defendant Bombardier  
Transportation (Holdings) USA, Inc.

It is hereby ordered that the Court's Order of March 17, 2006, be modified so that:

1. The parties shall have until September 29, 2006, to engage in limited discovery on the issues raised previously in CCSF's and FMIC's Cross-Motions for Summary Judgment and on the issues raised by the Sixth Cause of Action in the Second Amended Complaint; and
2. Any motion for summary judgment shall be filed no later than October <sup>25</sup>~~29~~, 2006, and shall be noticed for hearing on \_\_\_\_\_, ~~2006~~ November 29, 2006, in accordance with the Civil Local Rules, and that the motion shall be limited to the issues raised in the previously-filed cross-motions and/or to the issue of the extent to which Bombardier's recovery, if any, against CCSF should be limited to the amount of any recovery awarded to CCSF under the FMIC policy as set forth in the Sixth Cause of Action in the Second Amended Complaint.

**IT IS SO ORDERED.**

Dated: July 10, 2006



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